

Succession Policy

1.0 Purpose of policy

1.1 To outline Karbon Homes' approach to requests to succeed to tenancies.

2.0 Objectives

2.1 To ensure the legal rights of persons qualifying to succeed to a tenancy are protected and acted upon.

2.2 To ensure that non-qualifying persons are given appropriate advice and guidance about alternative housing options.

2.3 To ensure that the procedures for dealing with issues such as the appropriateness of "more suitable accommodation" and tolerated levels of under-occupation are consistent with Karbon Homes' overall priorities and policies

To deal promptly with requests for succession of tenancy to

- Ensure best use of stock.
- Apply best practice.
- Deal sensitively with customers.

3.0 Policy detail

3.1 Statutory Rights- Assured Tenants

3.1.1 Section 17 of the Housing Act 1988 gives succession rights to the spouse of an assured tenant, or a person living as a tenant's husband or wife, provided that immediately before the death the spouse was living in the property as his or her only or main home and they are not themselves a successor. A spouse is defined to include a person who lives with the tenant as a wife or husband. Other family members do not have the statutory right to succeed. The provisions of Section 17 of the Housing Act 1988 will be applied equally to civil partners in addition to spouses.

3.1.2 The right of succession does not apply to assured shorthold tenancies during any fixed term tenancy but does apply once the fixed term has expired.

- 3.1.3 Only one succession is allowed. If the deceased tenant succeeded from a previous tenant or formerly had a joint tenancy which subsequently became a sole tenancy, then the spouse is not eligible to succeed.
- 3.1.4 When there is no statutory right of succession to a periodic tenancy and the tenancy has passed under a will or intestacy to another person, Karbon Homes (subject to any contractual rights set out below) has mandatory grounds for possession under the Housing Act 1988, Schedule 3, Ground 7.
- 3.1.5 In addition to this statutory right to succession there is also a “common law” right to survivorship. This applies where there is a joint tenancy and one of the joint tenants dies. Once this happens the tenancy passes to the surviving joint tenant, (or tenants) by survivorship. Survivorship will take priority over succession.

3.2 Statutory Rights- Secure Tenants

- 3.2.1 Section 87 of the Housing Act 1985 provides that when a sole secure tenant dies the tenancy may be passed on to a 'qualified' successor, provided there has been no previous succession to the tenancy. Where there has been a previous succession there can be no further succession.
- 3.2.2 A joint tenant will always obtain a sole tenancy following the death of the other joint tenant by survivorship, regardless of the relationship between the joint tenants.
- 3.2.3 Where survivorship has taken place there can be no further succession to the tenancy.
- 3.2.4 Persons qualified to succeed to a secure tenancy (Section 87, Housing Act 1985)
- The tenant's spouse, or registered civil partner, who was occupying the property as their only or principal home at the time of the tenant's death.
 - A member of the tenant's family who was living in the property as their only or principal home during the twelve months up to the tenant's death. Where succession is by a member of the family, there is a discretionary ground for possession available Karbon Homes if the property is larger than they require. Karbon Homes will allow under-occupancy of one bedroom.
- 3.2.5 If there is more than one person qualified to succeed on the death of the tenant, a spouse or civil partner will take precedence. If there is no spouse or civil partner, but there are more than one family member who meet the conditions for succession, they should choose between them who will succeed to the tenancy. There can only be succession to a sole tenancy, they would not jointly succeed to a joint tenancy. Where agreement can't be made by the claimants on who will succeed the tenancy then it will be at Karbon Homes absolute discretion to select the person who may pursue the claim.

Definitions of family member (Section 113, 1985 Housing Act)

- A person with whom the tenant lived as if they were husband or wife, or if in a same sex relationship but not registered civil partners, lived together as if they were civil partners
- The tenant's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece
- A relationship by marriage is treated as a relationship by blood
- A relationship of the half blood is treated as a relationship of the whole blood
- The stepchild of a person is treated as his or her child
- An illegitimate child is treated as the legitimate child of his mother and reputed father

3.3 Contractual Rights

3.3.1 As well as the statutory rights to succession set out above, tenants of the former housing companies shown below were given additional contractual rights at the time of stock transfer:

- Milecastle Housing
- Castle Morpeth Housing
- Derwentside Homes

3.3.2 It was agreed that any successions which had taken place prior to the transfer of stock from the Local Authorities to the above housing companies would be disregarded.

3.3.3 Further additional succession rights were granted within the individual stock transfers as follows:

3.4 Former Tynedale District Council tenants at the time of stock transfer to Milecastle Housing were given the following additional contractual right:

If the deceased has no surviving spouse or partner or joint tenant, a member of the family may succeed as long as:

- they occupied the home as their only main home; and
- they lived with the deceased throughout the period of 12 months ending with the death; and
- they satisfy us (acting reasonably) that they have a right to inherit the tenancy; and
- they notify us in writing of their claim to succeed within 6 months of the death (we may allow a longer period at our discretion), and

- they apply for the Grant of Probate and/or letters of Administration and/or seek to have the tenancy vested in them under the deceased's Will or Intestacy within six months of the death.

If the conditions above are met then the person applying for the right of succession will be successful and they will succeed to the tenancy in question.

Special Succession Rights

If you are not a successor (as defined above) and if on your death there is no person who is able to succeed, Karbon Homes agree that if a person:

- lawfully occupied your home as their only or main home at the time of your death and lawfully resided with you throughout the period of twelve months ending with your death (this twelve month period does not apply to partners of the same sex) and
- makes a claim in writing to us within three months of the death or such longer time as Karbon Homes shall in its discretion allow;

then Karbon Homes will end the tenancy agreement and grant a new tenancy either of the deceased's home or, at its discretion, of other premises that it considers to be more suitable. Such a tenancy shall be granted on such terms and conditions as we consider appropriate.

If more than one person makes a claim then in the absence of agreement between such claimants, Karbon Homes will in our absolute discretion select the person who may pursue the claim.

3.5 Former Castle Morpeth Borough Council tenants - At the time of transfer to Castle Morpeth Housing the following contractual rights were agreed:

Succession can be granted to someone other than a partner of the sole tenant, if the sole tenant was not a successor and if:-

- He/she is a member of the sole tenant's household, and
- Lived with the sole tenant for the twelve months before the sole tenant's death, and,
- Lived in the sole tenant's home, as his/her only or principle home, at the time of the sole tenant's death and
- Agrees to abide by the terms of the tenancy.

Possession may be sought if, six months after the death of the sole tenant, there has been no grant of probate or letters of administration. If inheritance rules do not allow someone who qualifies as above to take over the tenancy, under Ground 7 of the Tenancy Agreement, the tenancy can be ended and they will be granted a new tenancy.

3.6 Former Derwentside District Council Tenants at the time of the stock transfer to Derwentside Homes existing tenants were given the following succession rights.

On the death of a sole tenant and if no one is qualified to succeed, the tenancy shall pass to a qualifying member of the tenant's family who occupies the home as his or her only or principal home provided:

- that such a person has resided with the Tenant for 13 months prior to the Tenant's death;
- that the person has been referred to in the Tenancy Agreement when the Tenancy commenced or we received notification of them moving into the property
- such person agrees in writing to abide by the terms of this tenancy.

The Tenancy shall pass under this clause to the Tenant's spouse, civil partner or other partner, if not qualified or, if there is no such person or if he or she declines to accept the Tenancy, priority shall be accorded in the following order of preference:

- the Tenant's resident adult son or daughter; then
- any other adult resident qualifying member of the Tenant's family.
- If there is more than one person of equal priority to succeed to the Tenancy, the Tenancy shall pass to whichever is agreed between them, or, in the absence of agreement, will be determined by Karbon Homes.

3.7 Contractual Rights- Assured Tenants

3.7.1 Upon the death of a tenant anyone who believes they have an entitlement to succeed to the tenancy, must make written application to Karbon Homes within 3 months of the death of the tenant.

3.7.2 If the successor is the spouse or partner of the deceased tenant, then the tenancy will pass to the applicant so long as they were living in the property at the time of the tenant's death.

3.7.3 If there is no joint tenant, spouse or partner Karbon Homes will consider applications from other family members who had been living with the deceased tenant continuously for a period of at least 12 months preceding the death of the tenant.

3.8 General Terms

3.9 Children under the age of 18 may succeed to a tenancy. Any grant of a tenancy to a minor will be by way of an Equitable Tenancy Agreement until they reach the age of 18 years old. This tenancy will be held in trust by a responsible third party during this period.

3.10 Karbon Homes will treat same sex partners in the same way as heterosexual partners.

3.11 In the event where there is more than one person with a claim to succession, and the claimants cannot reach agreement, Karbon Homes will in our absolute discretion select the person who may pursue the claim.

3.12 Successors are not required to sign a new tenancy agreement, as this would create a new tenancy. However, the successor must sign confirmation that they have read and understand the terms and conditions of the tenancy.

3.13 No more than one person can succeed a tenancy.

3.14 Where someone has the contractual right to succession, Karbon Homes will reserve the right to require them to move to another property if it is felt that the property is not suitable for them, for example, it is too large for their needs or the property has been adapted and they do not need those adaptations.

3.15 Where a tenancy has been assigned to someone who would have qualified as a successor then no further successions can take place. Assignment by way of mutual exchange does not count as a statutory succession.

3.16 There is only one right to succession in law. Where this has already been exercised or the household member does not qualify to succeed the tenancy, Karbon Homes may grant a new tenancy of the property in exceptional circumstances (or of another suitable property if the existing home is too large or specialist accommodation is no longer required by the surviving occupier).

'Exceptional circumstances' includes where a person is:

- A non-qualifying household member who was living in the property as their only or principal home during the twelve months up to the tenant's death.
- A family member of a deceased tenant who was himself or herself a successor.

- Someone who has cared for the deceased tenant, who was living in the property as their only or principal home during the twelve months up to the tenant's death.
- Someone who has accepted responsibility for the deceased tenant's dependents.

3.17 All accommodation offered will be in accordance with the size of property entitlement guidelines outlined in Karbon Homes Allocations Policy.

3.18 Where there is no statutory or contractual right to succeed the tenancy, Karbon Homes will seek to recover possession of the property. For any persons residing in the property, whether these are authorised occupants or unlawful occupiers, then Karbon Homes will always charge those occupiers a 'use and occupation' charge as mesne profit or compensation for lost rent. The level of use and occupation charges will be notified in writing to the occupants and will usually be equivalent to sum of full rent that would be charged if the property was let.

4.0 Monitoring and Review

This policy will be reviewed every 3 years unless there are significant changes in legislative or regulatory requirements or good practice

5.0 Equality and Diversity

This policy is implemented in line with the Group's Equality and Diversity Policy and associated legislation. Consideration will be given to all protected characteristics under the Equality Act 2010 to eliminate discrimination, advance equality of opportunity and foster good relations.

This policy and associated documents are available in different languages and alternative formats where necessary.

6.0 Data Protection and Privacy

We have a clear policy on data protection and sharing data with other partners/third parties under the requirements of the General Data Protection Regulation. This is clearly set out in the Data Protection Policy for the Karbon Homes Group which in association with the Data Protection Procedures must be followed throughout the operation of this policy.